



## City of Rochester



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January 12, 2005

TO THE COUNCIL

Ladies and Gentlemen:

Re: Lead-Based Paint Poisoning Prevention

R2010:

Campaign 3 - Health, Safety & Responsibility

Campaign 4 - Environmental Stewardship

Transmitted herewith for your approval is legislation which will amend Chapter 90 of the City Code by adding provisions which will protect residents from exposure to lead-based paint hazards and, thereby, reduce the incidence of lead poisoning in the community, particularly among young children.

While adults can suffer adverse health effects from exposure to lead, those most at risk are fetuses and children under age six. The dangers of exposure to lead-based paint hazards, especially to young children, are well documented and pose a serious public health threat. According to the Centers for Disease Control and Prevention, "Lead is a poison that affects virtually every system in the body" and is particularly harmful to brain and nervous system development. Childhood lead poisoning can result in reduced intelligence, low attention span, and reading and learning disabilities, and has been linked to juvenile delinquency, behavioral problems, and other adverse health effects. The consequent costs to society are enormous. Other than the most extreme cases, childhood lead poisoning may go undiagnosed and untreated, since most poisoned children have no obvious symptoms.

Over the past twenty-five years, the removal of lead from gasoline, food canning and other sources has been successful in reducing national blood lead levels by over 80 percent. Still, each year approximately 1,000 local children are found to have excessive levels of lead in their blood, making lead poisoning the number one childhood environmental health problem in Monroe County, according to Dr. Andrew Doniger, Director of the Monroe County Department of Public Health. The latest available data for Monroe County is from 2003, when 1,019 children six years of age or younger were found to have blood lead levels exceeding 9.9 micrograms per deciliter.

Higher childhood blood lead levels are associated with lower household income and residence in older rental housing. Minority populations are disproportionately impacted by the problem.

Lead-based paint in housing is the major remaining source of lead exposure and is responsible for most cases of childhood lead poisoning today. Generally, the older the home, the greater the amount of lead-based paint to be found. The use of lead-based paint was highest in housing built before 1960. It was completely banned for residential use in 1978 by the Consumer Product Safety Commission. According to the 2000 Census, there were 69,825 pre-1960 occupied housing units in the City of Rochester, of which 37,604 (54%) were renter-occupied.

EEO/ADA Employer



Lead poisoning is a preventable environmental health condition. If properly maintained, lead-based paint can remain in place and not present a hazard. Housing can be made "lead-safe" and, therefore, remain safe for habitation.

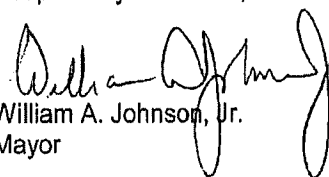
The proposed legislation contains provisions and standards modeled after the federal regulatory requirements promulgated by: the United States Department of Housing & Urban Development at Title 24 CFR Part 35 - Lead-Based Paint Poisoning Prevention in Certain Residential Structures; the United States Environmental Protection Agency at Title 40 CFR Part 745 - Lead-Based Paint Poisoning Prevention in Certain Residential Structures; and the United States Department of Labor at Title 29 CFR Part 1926.62 - Safety and Health Regulations for Construction - Lead; and incorporates some provisions by reference. In so doing, it is our intent to establish consistency between the City's local lead poisoning prevention efforts and those of these federal agencies.

"Primary prevention" is a public policy approach to lead poisoning prevention which was embraced at the federal level through the enactment of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Public Law 101-550; U.S.C. 48851 *et seq.*). The proposed legislation embraces primary prevention in its operation. Specifically, the legislation provides for:

1. As part of a Certificate of Occupancy inspection and other inspections of residential properties, deteriorated paint will now be addressed as a potential hazard upon a presumption that lead-based paint is present in pre-1978 properties, unless determined otherwise through an evaluation of the property by a qualified professional;
2. The presence of deteriorated paint in a pre-1978 property is considered to be a lead-based paint hazard requiring correction using lead-safe work practices, including precautions to protect occupants and residents of adjoining properties from exposure to lead hazards;
3. Properties where lead-based paint hazards have been corrected are required to pass a clearance examination;
4. Protection of tenants rights which prohibit retaliatory evictions; and
5. Maintenance of a publicly accessible database of properties which have undergone lead-based paint hazard reduction and control utilizing federal funds and properties which have been granted a Certificate of Occupancy after the effective date of this legislation.

I believe that this legislation will establish an effective primary prevention approach to prevent lead-based paint poisoning, which both respects the seriousness of this public health issue and is feasible in its implementation.

Respectfully submitted,

  
William A. Johnson, Jr.  
Mayor



## Ordinance No.

Amending Chapter 90 Of The Municipal Code  
With Respect To Lead-Based Paint Poisoning  
Prevention

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. Chapter 90 of the Municipal Code, Property Conservation Code, is hereby amended by renumbering Article III as Article IV, renumbering Sections 90-45 and 90-46 as Sections 90-70 and 90-71, respectively, and by adding a new Article III thereof to read in its entirety as follows:

Article III. Lead-Based Paint Poisoning Prevention.

§90-50. Policy and intent.

It is the policy of the City of Rochester to help prevent the poisoning of its residents by requiring that the presence of deteriorated lead-based paint in and on pre-1978 residential structures and on pre-1978 non-residential structures be identified and be correctly addressed by reducing and controlling lead-based paint hazards which may be present in order to prevent human exposure to such hazards.

§90-51. Legislative findings.

- A. Lead poisoning poses a serious public health threat to children and adults in the City of Rochester.
- B. Younger children are particularly susceptible to the hazards of lead-based paint since their bodies are still developing. Fetuses are also vulnerable to the effects of lead-based paint because pregnant women can transfer lead to their fetuses, which can result in adverse developmental effects.
- C. Low levels of lead in a fetus or young child can result in reduced intelligence and attention span, learning disabilities, hearing impairment, and behavior problems.
- D. A minute amount of lead can cause elevated blood lead levels resulting in serious and irreversible developmental damage, particularly in children under the age of six years.
- E. Childhood lead poisoning causes enormous societal costs, including medical costs and special education costs.
- F. Exposure to lead hazards from deteriorated lead-based paint is a primary cause of elevated blood lead levels in humans.

- G. Structures built before 1978 are the most likely to contain lead-based paint hazards.
- H. Residential properties are more likely than are non-residential properties to be a source of exposure to lead-based paint hazards by children.
- I. Children living in older, poorly maintained homes are disproportionately at risk for lead-based paint hazards.
- J. The exposure to lead-based paint hazards in the City of Rochester is most common, and presents the most serious risk, to young children residing in rental housing built before 1978.
- K. It is essential to the overall public health of persons in the City of Rochester, and particularly for children younger than six years of age, that they be protected from exposure to lead-based paint hazards.

§90-52. Definitions.

ABATEMENT means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of "PERMANENT"). Abatement includes: (1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

CERTIFIED means licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision by the United States Environmental Protection Agency (EPA) in accordance with 40 CFR Part 745, Subpart L.

CERTIFIED LEAD-BASED PAINT INSPECTOR means an individual who has been trained by an accredited training program, as defined by 40 CFR §745.223, and certified by EPA pursuant to 40 CFR §745.226 to conduct lead-based paint inspections. A certified lead-based paint inspector also samples for the presence of lead in dust and soil for the purposes of clearance testing.

CERTIFIED RISK ASSESSOR means an individual who has been trained by an accredited training program, as defined by 40 CFR §745.223, and certified by EPA pursuant to 40 CFR §745.226 to conduct risk assessments. A certified risk assessor also samples for the presence of lead in dust and soil for the purposes of clearance testing.

CHEWABLE SURFACE means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an

"accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

**CLEARANCE EXAMINATION** means an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this Article, exist in the dwelling unit or worksite.

**COMMON AREA** means a portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, porches, basements, attics, garages and boundary fences.

**COMPONENT** means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

**CONTAINMENT** means the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

**DETERIORATED PAINT** means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

**DRY SANDING** means sanding without moisture and includes both hand and machine sanding.

**DUST-LEAD HAZARD** means surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the EPA pursuant to section 403 of the Toxic Substances Control Act.

**DWELLING UNIT** means a: (1) Single-family dwelling, including attached structures such as porches and stoops; or (2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

**ENCAPSULATION** means the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of "PERMANENT").

**ENCLOSURE** means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent (see definition of "PERMANENT").

**EVALUATION** means a risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

**FRICION SURFACE** means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

**g** means gram, **mg** means milligram (thousandth of a gram), and **ug** means microgram (millionth of a gram).

**HAZARD REDUCTION** means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

**HEPA VACUUM** means a vacuum cleaner device with an included high- efficiency particulate air (HEPA) filter through which the contaminated air flows, operated in accordance with the instructions of its manufacturer. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

**IMPACT SURFACE** means an interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

**INTERIM CONTROLS** means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

**LEAD-BASED PAINT** means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

**LEAD-BASED PAINT HAZARD** means any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

**LEAD-BASED PAINT INSPECTION** means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

**LEAD HAZARD INFORMATION PAMPHLET** means the most recent publication of the

**LEAD HAZARD INFORMATION PAMPHLET** means the pamphlet developed by the EPA, the United States Department of Housing and Urban Development and the Consumer Product Safety Commission pursuant to Section 403 of the Toxic Substances Control Act (15 U.S.C. 2686), entitled "Protect Your Family From Lead in Your Home."

**OCCUPANT** means a person who inhabits a dwelling unit.

**OWNER** means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

**PAINT STABILIZATION** means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

**PAINT TESTING** means the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

**PAINT REMOVAL** means a method of abatement that permanently eliminates lead-based paint from surfaces.

**PAINTED SURFACE TO BE DISTURBED** means a paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

**PERMANENT** means an expected design life of at least 20 years.

**REDUCTION** means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

**REHABILITATION** means the improvement of an existing structure through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

**REPLACEMENT** means a strategy of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

**RESIDENTIAL PROPERTY** means a dwelling unit, common areas, building exterior

surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

**RISK ASSESSMENT** means: (1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and (2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

**SOIL-LEAD HAZARD** means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the U.S. Environmental Protection Agency pursuant to section 403 of the Toxic Substances Control Act.

**TENANT** means the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

**VISUAL ASSESSMENT** means a visual examination for, as applicable: (1) Deteriorated paint; (2) Visible surface dust, debris and residue as part of an inspection, a risk assessment or clearance examination; or (3) The completion or failure of a lead-based paint hazard reduction measure.

**WET SANDING or WET SCRAPING** means a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

**WINDOW TROUGH** means the area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

**WIPE SAMPLE** means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

**WORKSITE** means an interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

#### §90-53. Presumption.

- A. For purposes of this article, all paint on the interior or exterior of any residential building on which the original construction was completed prior to January 1, 1978 shall be presumed to be lead-based.



- B. For purposes of this article, all paint on the exterior of any non-residential structure on which the original construction was completed prior to January 1, 1978 shall be presumed to be lead-based.
- C. Any person seeking to rebut these presumptions shall establish through the means set forth in Section 90-55 that the paint on the building or structure in question is not lead-based paint.

§90-54. Inspection for deteriorated paint.

All inspections performed as part of an application for a Certificate of Occupancy, pursuant to Section 90-16 of the City Code, a renewal of a Certificate of Occupancy, or based upon the filing of a complaint, shall include an inspection for deteriorated paint.

§90-55. Remedy for deteriorated paint.

Following an inspection which results in the detection of deteriorated paint, the condition may be corrected only by one of the following methods:

- A. Certification by a lead-based paint inspector or risk assessor that the property has been determined through a lead-based paint inspection conducted in accordance with the federal regulations at 24 CFR §35.1320(a) not to contain lead-based paint, provided, however, that the property has been inspected pursuant to those requirements.
- B. Certification by a lead-based paint inspector or risk assessor that all lead-based paint in the property has been identified, removed, and clearance has been achieved in accordance with federal regulations found at 24 CFR §§35.1320, 35.1325 and 35.1340, provided however that the property has been inspected pursuant to those requirements since the deteriorated paint was last detected.
- C. Certification by the Rochester Housing Authority or other state or federal supervising agency which regulates an assisted housing program stating that the property is in compliance with the inspection and clearance requirements of the housing program or, with respect to federally assisted housing, the requirements of 24 CFR Part 35, provided, however, that with respect to the Federal Housing Choice Voucher program, the property has been inspected pursuant to those requirements since the deteriorated paint was last detected.
- D. Certification by a risk assessor that: (1) all lead-based paint and hazards in the property have been identified; (2) all lead-based paint hazards have been reduced and controlled; and (3) that clearance has been achieved, in accordance with federal regulations found at 24 CFR §§35.1320, 35.1330 and 35.1340; provided, however, that the property has been inspected pursuant to those requirements since the deteriorated paint was last detected.

§90-56. Standards for clearance examination and report.

The remedy available through Section 90-55D shall require that a clearance examination be completed for a property upon which deteriorated paint has been detected in accordance with the following requirements:

A. Qualified personnel. Certification of clearance shall be issued by:

- (1) A certified risk assessor; or
- (2) A certified lead-based paint inspector.

B. Required activities.

- (1) For Certificate of Occupancy inspections, a clearance examination shall include a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Examinations shall be performed in dwelling units, common areas and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8) and (9). For complaint driven inspections, the dwelling unit or common area complained of shall be inspected.
- (2) A visual assessment shall be performed to determine if deteriorated paint surfaces and/or visible amounts of dust, debris, paint chips or other residue are present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint and visible dust, debris or residue are present in areas subject to dust sampling, they must be eliminated prior to the continuation of the clearance examination. If exterior painted surfaces have been disturbed by the hazard reduction, maintenance or rehabilitation activity, the visual assessment shall include an inspection of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visible dust or debris in such outdoor living areas shall be cleaned up and visible paint chips on the ground shall be removed.
- (3) Dust samples shall be wipe samples and shall be taken on floors, including porches, and, where practicable, interior windowsills and window troughs. Dust samples shall be collected and analyzed in accordance with 24 CFR §35.1315.

C. Report.

The clearance examiner shall ensure that an examination report is prepared that provides documentation of the examination.

- (1) The report shall include the following information:
  - (a) The address of the residential property and, if only part of a multi-family property is affected, the specific dwelling units and common

areas affected.

- (b) The date(s) of the examination;
  - (c) The name, address, and signature of each person performing the examination, including their EPA certification number;
  - (d) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;
  - (e) The results of the analysis of dust samples, in ug/sq.ft., by location of sample; and
  - (f) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).
- (2) When abatement is performed, the report shall be an abatement report in accordance with 40 CFR §745.227(e)(10).

D. Clearance standards.

Where a lead-based paint hazard has been identified, the dust-lead standards in 40 CFR §745.65(b) shall be met before a Certificate of Occupancy may be issued or a violation cleared. With respect to porches, the standard required for clearance shall be 400 ug/sq. ft., provided however, that if a porch is found to contain more than 40 ug/sq. ft., the inspector or assessor shall advise the occupants of the premises that the porch constitutes a potential lead-based paint hazard that requires continued caution and that the occupants should read and follow closely the information in the lead hazard information pamphlet regarding lead safe maintenance practices such as frequent washing, and that pamphlet shall be provided to the occupants.

E. Requirement to avoid conflict of interest regarding clearance inspection.

All examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities.

§90-57. Lead-safe hazard reduction and control.

- A. No person shall disturb or remove lead-based paint, or in any other way generate excessive dust or debris during work on the interior or exterior of any existing building or structure except in accordance with the requirements of this Section and Sections 90-58 and 90-59.
- B. Exemptions.

This Section shall not apply to activities that disturb or remove paint where the activities are being performed on buildings on which construction was completed on or after January 1, 1978.

C. Sign required when exterior lead-based paint (or presumed lead-based paint) is disturbed:

- (1) Not later than the commencement date of any lead-based paint hazard reduction work, the owner, or the contractor when the owner has entered into a contract with a contractor to perform such work on the exterior of a building or structure, shall post signs in a location or locations clearly visible to the adjacent properties stating the following:

LEAD-BASED PAINT HAZARD REDUCTION WORK IN PROGRESS

PUBLIC ACCESS TO  
WORK AREA  
PROHIBITED

POSTED IN ACCORDANCE WITH CHAPTER 90  
OF THE CITY OF ROCHESTER CODE

FOR FURTHER INFORMATION, PHONE -----

- (2) The sign required by this subsection shall be not less than 24 inches square and shall be in large boldface capital letters no less than one-half inch in size, and shall contain the notification in both English and Spanish. The sign required by this subsection shall remain in place until the lead-based paint hazard reduction work has been completed.
- (3) Where it is not possible to post signs in a conspicuous location or locations clearly visible to the adjacent properties, the owner, or where the owner has entered into a contract with a contractor to perform lead-based paint hazard reduction work, the contractor shall provide the notice in written form, such as a letter or memorandum, to the occupants of adjacent properties.

E. Notice to tenants.

Where lead-based paint hazard reduction work is to be performed on the interior or exterior of buildings occupied by one or more tenants, not less than three business days before any lead-based paint hazard reduction work is to commence, the owner shall provide the following information:

- (1) Contents of notice.

Provide written notice to tenants of the building on which the work is being

performed that lead-based paint hazard reduction work is being performed. This notice, which shall be in both English and Spanish, shall be in compliance with the EPA pre-renovation notification rules set forth in 40 CFR Part 745, Subpart E, shall be in the form of a sign, letter or memorandum, and shall prominently state the following:

Work is scheduled to be performed beginning [date] on this property that may disturb or remove lead-based paint. The persons performing this work are required to follow federal and local laws regulating work with lead-based paint. You may obtain information regarding these laws, or report any suspected violations of these laws, by calling the City of Rochester at \_\_\_\_\_ (a number to be designated by the City). The owner of this property is also required to provide tenants with a copy of the lead hazard information pamphlet.

- (2) The owner shall provide all tenants in the building with a copy of the lead hazard information pamphlet.

F. Notice by contractor.

Where lead-based paint hazard reduction work is being performed by a contractor on residential property, the contractor shall at least three business days prior to the commencement of such work, notify the property owner of potential lead hazards during the project by delivering to the owner a copy of the lead hazard information pamphlet.

G. Early commencement of work by owner.

A property owner may commence, or may authorize a contractor to commence, lead-based paint hazard reduction work less than three business days after providing notices required above when such work must be commenced immediately to correct an emergency condition, such as work necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

H. Early commencement of work requested by tenant.

Upon written request of a tenant, an owner may commence or authorize a contractor to commence, lead-based paint hazard reduction work on that tenant's unit less than three business days after providing notices required in subsection E above.

§90-58. Occupant protection and worksite preparation.

A. Occupant protection.

- (1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite) until after hazard reduction work has been completed and clearance has been achieved.
- (2) Occupants shall be temporarily relocated before and during hazard reduction activities, except if:
  - (a) Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards;
  - (b) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards and debris is provided;
  - (c) Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or
  - (d) Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet of the containment area is cleaned to remove any visible dust or debris, and occupants have safe daily access to sleeping areas, and bathroom and kitchen facilities.
- (3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.

B. Worksite preparation.

- (1) The worksite shall be prepared, including the placement of containment barriers, to prevent the release of leaded dust, and contain lead-based

paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.

- (2) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated. Each warning sign shall be as described in 29 CFR §1926.62(m), except that it shall be posted irrespective of employees' lead exposure and, to the extent practicable, provided in the occupants' primary language.

§90-59. Safe work practices.

- A. Lead-based paint shall not be applied to any exterior or interior surface.
- B. Prohibited methods.

The following methods of paint removal listed in 24 CFR §35.140 shall not be used:

- (1) Open flame burning or torching.
- (2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- (3) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
- (5) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 foot of electrical outlets, or when treating defective paint spots totaling no more than 2 square feet in any one interior room or space, or totaling no more than 20 square feet on exterior surfaces.
- (6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 CFR §1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations at 29 CFR §§1910.1200 or 1926.59, as applicable to the work.

- C. Worksite preparation.

The worksite shall be prepared in accordance with Section 90-58B.

D. Specialized cleaning.

After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

E. *De minimis* levels.

Safe work practices are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than:

- (1) 20 square feet on exterior surfaces;
- (2) 2 square feet in any one interior room or space; or
- (3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

§90-60. Emergency actions, weather conditions.

- A. For emergency actions necessary to safeguard against imminent or immediate danger to human life, health or safety, or to protect property from further structural damage, including demolitions ordered pursuant to Sections 47A-16B & C of the Municipal Code, occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable. This exemption does not apply to any work undertaken subsequent to, or above and beyond such emergency actions, other than the demolitions noted above.
- B. Performance of lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this Article may be delayed for a reasonable time during a period when weather conditions render impossible the completion of conventional construction activities, provided however, that this limitation shall continue only for the period in which work cannot be performed in the work safe manner as provided for herein.

§90-61. Exemptions.

This Article shall not apply to properties taken by a governmental entity in a foreclosure proceeding which are vacant and secured and: (1) scheduled for demolition, or (2) scheduled for sale within twelve months.

§90-62. Prohibition of retaliatory action.

- A. It is unlawful for an owner, or any person acting on his or her behalf, to take any



retaliatory action toward a tenant who reports a suspected lead-based paint hazard to the owner or to the City. Retaliatory actions include but are not limited to any actions that materially alter the terms of the tenancy (including rent increases and non-renewals) or interfere with the occupants' use of the property.

- B. There shall be a rebuttable presumption that any attempt by the owner to raise rents, curtail services, refuse to renew or attempt to evict a tenant within six months after any report to the City or the owner or any enforcement action in connection with a suspected lead hazard is a retaliatory action in violation of this section, except that in instances of nonpayment of rent or commission of waste upon the premises by the tenant no such presumption shall apply. After six months from the date of the reporting of a suspected lead hazard, or the most recent activity related to any enforcement action, the defense of retaliatory eviction shall remain available to the tenant, but without the benefit of the presumption created by this section.
- C. The provisions of this section shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

§90-63. Notification to county of lead-based paint hazards.

The City shall continue to send notices to the County of Monroe listing any health and safety violations found in properties inspected by the City. Any lead-based paint hazards that have been identified shall be included in that list.

§90-64. Database for properties.

- A. The City shall maintain a database, accessible to the public, of all residential properties where lead hazards have been identified, reduced and controlled with funds received by the City from the United States Department of Housing and Urban Development which require that such a database be maintained. The City shall further maintain a database of all residential properties granted a Certificate of Occupancy after the effective date of this ordinance.
- B. The databases created pursuant to this section shall be kept available for "walk-in" inspection by the public. No person requesting access shall be required to complete a Freedom of Information request in order to view this database.

Section 2. Section 90-14 of the Municipal Code, Property maintenance, is hereby amended by repealing subsection A thereof, and by relettering Subsections B and C as Subsections A and B, respectively.

Section 3. This ordinance shall take effect sixty days after the date of its adoption.